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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,327	06/06/2001	William Christopher Duffy	2339-0111P	6116

2292 7590 09/23/2003

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EXAMINER

REDMAN, JERRY E

ART UNIT	PAPER NUMBER
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3634

DATE MAILED: 09/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

8K

Office Action Summary	Application No. 09/874,327	Applicant(s) DUFFY, WILLIAM CHRISTOPHER	
	Examiner Jerry Redman	Art Unit 3634	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, line 7, the phraseology "said cover member being formed to the shape of the duct" is not readily understood by the Examiner. Specifically, what is meant by "the shape"? Cross-sectional shape? In claim 10, line 7, the phraseology "said cover panel being formed to the shape of the duct" is not readily understood by the Examiner. Specifically, what is meant by "the shape"? Cross-sectional shape? In claim 15, lines 7-8, the phraseology "said cover member comprising a material modifiable in the field to conform to the shape of the duct" is not readily understood by the Examiner. Specifically, what is meant by "the shape"? Cross-sectional shape?

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

As best understood, claims 1, 2, 8-12, and 15-17 are further rejected under 35 U.S.C. 102(b) as being anticipated by Dugger. Dugger discloses an access assembly comprising a duct (22), a fire resistant seal (74), a rectangular fire resistant cover member (10) in the shape of the duct (22), a plurality of fasteners (see figure 2), and a plurality of wing nuts for mounting the cover member (10) to the duct.

Claims 3-7, 13, 14, and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The applicant's arguments have been considered but are not deemed persuasive. As stated in the Office Action dated 12/23/2002 (paper #8), the Examiner specifically questioned the phraseology "the shape" and more specifically, "the shape of the duct". A duct comes in many different sizes, shapes, lengths, and having elbows, dividers, cone shaped, and reduction in size from larger to smaller or visa verse. The applicant argues that "the shape of the duct" is understood but fails to convince the Examiner that a panel is "the shape of the duct" as discussed in detail above. Furthermore, the applicant does not show any panel which is "the shape of the duct". The applicant merely shows that "the shape of the duct" can be attached to an outer surface of a duct with the outer surface of the duct having a curved surface, a flat surface or an angle between two flat surfaces but in no figure or in the specification does the applicant show that the panel is "the shape of the duct". Still furthermore, the applicant states that Dugger merely shows a cover member which covers an access opening. The applicant is correct. But this is all that the applicant is claiming, a panel assembly for an access opening. Yet still furthermore, the phraseology "adapted to" and "for...." fails to positively recite the claimed invention and has no patentable weight.


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication should be directed to Jerry Redman at telephone number 703-308-2120.


Jerry Redman
Primary Examiner